IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1978 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19/08/2004 in WP.No.14763 of 2004 on the file of the High Court.)

Between:

1 Regional Provident Fund Commissioner, Employees

Provident Fund Organisation, Barkatpura, Hyderabad.
2 The Asst. Provident Fund Commissioner, (Recovery),

Sub Accounts Office, Patancheru, Medak District.

..... APPELLANT(S)

AND

M/s. Deccan Foam Plastics Pvt. Ltd.,

Narsapur (V &M), Medak District,

Regd. Off. 50, 1st Floor, SBI Colony,
New Bakaram, Hyderabad-80,

rep. by its Managing Director Sri B.V.R.K. Reddy.

.....RESPONDENT

Counsel for the Appellants:MR.R.N.REDDY, Standing Counsel for EPF

Counsel for the Respondent: MR.G.RAVI MOHAN

The Court at the admission stage made the following:-

Judgment: (Per BRSR,J)

The respondent/writ petitioner herein filed W.P. No.14763 of 2004 seeking Writ of *Mandamus* declaring the action of the second appellant herein in issuing proceedings No.AP/21765/SAO/PTC/
ENF(Recy)/RC.No.19/03/2004/778, dated 23-07-2004, as illegal, arbitrary and unjust and accordingly prayed for a consequential direction to set aside the said proceedings.

That for whatever reasons, the respondent-company became a sick company and the matter was referred to the Board for Industrial and Financial Reconstruction (for short 'BIFR') before whom the proceedings are pending in case No.250 of 2000. The respondent-company issued a closure notice on 11-08-2003 and the same was informed to the second appellant, with which, we are not concerned for the present in this appeal. The respondent-company was served with the notice, dated 01-04-2003, for recovery of the amounts towards the provident fund contributions, to which, the respondent submitted a detailed explanation. The appellants by proceedings,

dated 30-09-2003, ordered the attachment of the properties of the respondent-company, which includes the land and building. The operative portion of the order is as follows:

> *"It is ordered that you, the said*
> *Shri B.V.R.K.Reddy, MD of M/s.Deccan Foam Plastics (P) Ltd., (AP/21765) be and you are hereby prohibited and restrained, until further orders of the undersigned from transferring or charging the under mentioned property any way and that all persons be, and that they are hereby prohibited from taking and benefits under such transfer or charge."*

That a panchanama was conducted on 13-11-2003 in the presence of the Finance Manager of the respondent-company.

Thereafter, the appellants issued a show cause notice–cum– levy order, dated 30-06-2004, imposing a penal damage under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act"). The respondent-company is stated to have submitted a detailed explanation. The respondent-company, aggrieved by the impugned notice, dated 23-07-2004, proposing to execute the certificate by arrest and imprisonment of the Managing Director of its company, filed the writ petition.

The learned single Judge by following the order passed by a Division Bench of this Court, disposed of the writ petition filed by the respondent-company declaring that the arrest of the employer and his detention in prison cannot at all be made in view of the proviso to Section 8B(1) of the Act. The learned Judge gave liberty to the appellants to proceed with the sale of the properties attached and if the sale proceedings are not sufficient to discharge the amount mentioned in the certificate, liberty was given to initiate the proceedings against the property of the employer for recovery of the whole or any part of such arrears and a direction was issued not to arrest the Managing Director of the respondent-company until the remedies are exhausted in the proceedings under Section 8B(1) of the Act.

In this appeal, Sri R.N. Reddy, learned Standing Counsel for the appellants, did not

dispute that the order passed by the learned single Judge is in conformity with the order passed by the Division Bench of this Court in Writ Appeal No.177 of 2002.

Learned Standing Counsel for the appellants, however, contended that the order passed by the Division Bench is not in conformity with Section 8-B of the Act, which reads as follows:

> *"**Section – 8-B**:- **Issue of certificate to the Recovery Officer:-** (1) Where any amount is in arrear under Section 8, the authorized officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer, by one or more of the modes mentioned below:-*
>
> a. *attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;*
>
> b. *arrest of the employer and his detention in prison;*
>
> c. *appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer.*
>
> *Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient, for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.*
>
> *(2) The authorized officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken."*

Learned counsel in support of his submission relied on the decision reported in ***MOHAN v. REGIONAL PROVIDENT FUND COMMISSIONER & ANOTHER.***

We shall first refer to the order passed by our own Court. The Division Bench after making an analysis of Section 8-B of the Act, observed that the attachment and sale of any property under
Section 8-B of the Act shall first be effected against the properties of the establishment and where such attachment and sale is insufficient, for recovery of the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings as against the property of the employer for recovery of the whole or any part of such arrears. It is further observed that arrest of the employer and his detention in prison cannot at all be made in view of the proviso to Section 8-B (1) of the Act.

The submission of the learned Standing Counsel is that the proviso, which inter-alia, provides that the attachment and sale of any property under Section 8-B of the Act shall first be effected against the properties of the establishment and the proceedings against the property of the employer for recovery of the whole or any part of the arrears can be initiated only after the sale of the attached properties of the establishment is found to be insufficient for recovery of the amount, is only for the purposes of 8-B(a) of the Act alone. It means that the properties of the employer can be attached and the proceedings can be initiated for recovery of the amounts only after the attachment of sale of movable and immovable properties of the establishment and not before that. There is no dispute about the same. According to the learned counsel for the appellants, not only the properties of the establishment both movable and immovable properties can be attached for realization of the arrears pursuant to the recovery certificate, but simultaneously, employer can also be arrested for the purposes of his detention in prison even without exhausting the remedy of attaching both the movable and immovable properties of the employer.

In our considered opinion, the submission is misconceived and we are not inclined to read the provision in the manner suggested by the learned Standing Counsel. That under
Section 8-B of the Act even the movable and immovable properties of the employer cannot be attached and sold for the purposes of realization of the arrears without first

exhausting the remedy of attaching and bringing the properties of the establishment for sale and, if that is so, it would be absurd to hold that employer can be arrested for the purpose of sending him to imprisonment without even finding whether the attachment and sale of the properties of establishment for realization of the arrears is sufficient or not.

It is for that reason, this Court took the view that the arrest of the employer and his detention in prison cannot at all be made in view of the proviso to Section 8-B(1) of the Act without exhausting the remedy of attachment and sale of properties of establishment for realization of amounts of arrears. The proviso cannot be read in isolation but is to be read along with 8B(1)-(a)(b)(c) of the Act. It is no doubt true that the Punjab and Haryana High Court took the view holding that nothing in Section 8-B(1) and other provisions of the Act prevents Recovery Officer to adopt the method specified in clause (b) of Section 8-B(1) of the Act before exhausting the other modes of recovery. Such an interpretation, in our considered opinion, causes hardship and inconvenience. It is settled rule of interpretation that no statutory provision can be read in such a manner, which results in hardship and inconvenience.

For the aforesaid reasons, we are not inclined to take a different view other than the one taken by this Court in Writ Appeal No.177 of 2002. We are not inclined to agree with the view taken by the Punjab & Haryana Court.

For the aforesaid reasons, the Writ Appeal fails and the same shall accordingly stand dismissed. There shall be no order as to costs.

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(B.SUDERSHAN REDDY, J)

Date: 13th DECEMBER, 2004

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(C.V.RAMULU, J)

NOTE:

L.R. copies to be marked.

(B/O)

KVNI/PV

One fair copy to the Hon'ble Sri Justice B.Sudershan Reddy.

(for his lordship's kind perusal)

One fair copy to the Hon'ble Sri Justice C.V.Ramulu

(for his lordship's kind perusal)

To

1 The Regional Provident Fund Commissioner, Employees

Provident Fund Organisation, Barkatpura, Hyderabad.

2 The Asst. Provident Fund Commissioner, (Recovery),

Sub Accounts Office, Patancheru, Medak District.

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